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לעילוי נשמת ר' יצחק מאיר בן אליהו ובריינא בת אברהם ע"ה ור' גדליה בן אברהם מנחם הכהן ומרים בת ישראל ע"ה

## Halachos of a *Minyan*

### Rabbi Mordechai Fleisher

*How many members of a group of ten must actually be davening with the minyan?*

*How many people must be listening to chazaras hashatz?*

Davening with a *minyan* is an integral part of Torah-observant Judaism, and something that, during the early months of COVID, was difficult if not impossible for Jews across the world. Even as shuls have gradually and cautiously reopened, garnering a *minyan* still poses a challenge, and sometimes only a threadbare group of ten can be assembled, leading to questions of the need to wait for ten people to be on the same page so that *davening* can proceed. This article will explore some of these questions and what leniencies may be relevant during these unique times.

**The Source:** The Gemara (Brachos 6a) teaches, based on several verses, that prayer which takes place in a *bais haknesses*, as well as prayer which takes place as part of a group of ten, is far more efficacious. This idea is codified in the Shulchan Aruch (Orach Chaim 90:9), where it says that one should endeavor to *daven* in a *bais haknesses* with the *tzibbur* (congregation). The halachic issues of *tefila bitzibbur* (colloquially referred to as “*davening* with a *minyan*”) with a minimum number of participants will be addressed later in this article.

The Mishna in Megillah (23b) lists a number of things that cannot be done with less than ten adult Jewish males. The first things listed are dividing the *Shema* and going before the *teiva*. Dividing the *Shema*, as explained by Rashi (ibid. s.v. *ain porsin*), is a process (virtually never employed in contemporary times) that occurs when ten people arrived after the *tzibbur* (congregation) has already recited *Shema*. One of them stands and recites *kaddish*, *barchu*, and the first blessing of *Shema*. Going before the *teiva*, according to Rashi (ibid. s.v. *viain ovrin*), refers to the *shliach tzibbur* (the person leading the services)<sup>1</sup>.

The Gemara (ibid.) provides the source for the need for ten. The verse in Vayikra (22:32) states, “And I will be sanctified among the Bnai Yisrael.” Chazal infer that this verse refers to something known as a *davar shebikdusha*, a prayer that has a special sanctity. Based on several other verses exegetically connected to this verse, the Gemara teaches that “among Bnai Yisrael” refers to a group of ten – and so the requirement that a *davar shebikdusha* requires ten people is born. The Ran (Megillah *dapei Harif* 13b s.v. *mina hani mili*) explains that *chazaras hashatz* (the *shliach tzibbur*’s repetition of *Shemone Esrei*), which is what is actually under discussion in the mishna’s “going before the *teiva*,” is considered a *davar shebikdusha* because it includes *kedusha* (recited following the second blessing of *Shemone Esrei*), which has the status of a *davar shebikdusha*. “Dividing the *Shema*” mentioned at the start of the mishna is a *davar shebikdusha* due to the recitation of *kaddish* and *barchu*. This reality is borne out by Maseches Sofrim (Ch. 10), which states that *kaddish* and *barchu* may not be recited with less than ten.

The aforementioned passage in Maseches Sofrim continues, “Our teachers in the West say seven... and others say six.” This passage is cited by Tosafos in Megillah (ibid. s.v. *viain*). Tosafos, after noting that Rashi says that ten

<sup>1</sup> The term *teiva* (lit., box) is what is colloquially referred to today as “the *amud*.” It refers to the lectern where the *shliach tzibbur* stands.

people who have not yet prayed are needed to divide the *Shema*, says that Rabbeinu Tam interpreted the passage in Maseches Sofrim to mean that even seven, or six, people who have not yet prayed may divide the *Shema* if there are other people there to complete the group of ten. Rabbeinu Tam himself says that even five people who have not prayed in the group of ten would suffice, and Tosafos cite the students of Rashi as saying that even one person who has not prayed in a group of ten may divide the *Shema*<sup>2</sup>.

**A Majority or All Ten?:** The Ran (ibid. 13a-b s.v. *ain porsin*) states that Rabbeinu Tam understood the passage in Maseches Sofrim as referring to six or seven out of ten, and not just six or seven on their own, since this would be at odds with the aforementioned mishna. The Rambam (Hilchos Tefila 8:4), when discussing *chazaras hashatz* (he refers to it as *tefilah bitzibbur*) states that “one prays in a loud voice, and all are listening, and this cannot be done with less than ten free adult males, and the *shliach tzibbur* is included as one [of the ten], and even if some have already prayed and fulfilled their obligation, we may complete the group of ten with them, as long as the majority have not yet prayed.” The Kesef Mishna (ibid.) says that the Rambam rules in accordance with Rabbeinu Tam’s interpretation of the passage in Maseches Sofrim and rules in accordance with the opinion that six of the ten<sup>3</sup> suffices, as these six comprise a *rov*, a majority, and the rule is that *rubo kikulo*, a majority is considered like the entire thing<sup>4</sup>. The Ran elsewhere (Megillah *dapei haRif* 3a s.v. *hava uvda*) cites the Rambam says<sup>5</sup> that for the things listed in the aforementioned mishna, a *rov* suffices. All of these sources indicate that while a *minyan* of ten is necessary, only six of the ten must be part of the actual services taking place.

However, the matter is far from clear. The Rosh (Teshuvos Harosh 4:19) says that if there are not nine people listening to *chazaras hashatz*<sup>6</sup>, the blessings recited are close to being *brachos levatala* (blessings recited in vain). The Shulchan Aruch (Orach Chaim 124:4) cites this ruling as halacha. This indicates that a *rov* is insufficient. On the other hand, the Shulchan Aruch (ibid. 55:6), while discussing the laws of reciting a *davar shebikdusha* (in the context of *kaddish* and *barchu*), rules that if there is a *minyan* but one of the people either went ahead and began *Shemone Esrei* (and so cannot respond) or is sleeping, the *davar shebikdusha* may still be recited. This ruling implies that not all ten people need be actively part of the *davar shebikdusha*. There

<sup>2</sup> See Tosafos and Maseches Sofrim for the reasoning behind these numbers.

<sup>3</sup> There must be ten total, and if six of those ten have not yet *davened*, they may do so. Having just six people would not qualify as *rubo kikulo* if the other four are not present. See Responsa of Chasam Sofer Orach Chaim 140 (among other sources that make a similar point) that *rubo kikulo* is only when the *kulo*, the entirety, is present.

<sup>4</sup> This is difficult to understand, as the passage in Maseches Sofrim presents a different reason based on a verse. Perhaps the Kesef Mishna is explaining the Rambam’s preference for this interpretation of the verse as opposed to the others. See also Igros Moshe Orach Chaim 1:30.

<sup>5</sup> The simple reading of the Ran indeed says this. However, there are other interpretations of this passage. See footnote 10.

<sup>6</sup> With the *shliach tzibbur*, there is a full group of ten actively part of the *davar shebikdusha*.

are several resolutions to this apparent contradiction, and the different approaches have important ramifications for the question of whether a majority suffices.

The Drisha (Orach Chaim 124:1) says that the Rosh's wording is "close to being a *bracha levatala*," but the blessings recited are not actually in that category. Therefore, while it is preferable that all ten be part of the recitation of the *davar shebikdusha*, one may still recite the *davar shebikdusha* so long as six are actually participating. The Taz (ibid.:4) seems to take this approach, as well.

The Magen Avraham (55:8) cites the Maharil that the custom is not in accordance with the Rosh, despite the Shulchan Aruch's citation of the Rosh's opinion in Siman 124. It is unclear how he resolves the apparent contradiction in the rulings of the Shulchan Aruch.)

The Graz (Shulchan Aruch Harav 55:7) and the Pri Megadim (ibid. Mishbetzos Zahav 4) make a distinction between *chazaras hashatz* and other *devarim shebikdusha*. For *kaddish* and *barchu*, as well as *kedusha* in a situation where the *shli'ach tzibbur* has not yet *davened Shemone Esrei*<sup>7</sup>, a *rov* is sufficient. However, when the *shli'ach tzibbur* is repeating *Shemone Esrei* after having recited it quietly, and he is making actual *brachos* that are supposed to be on behalf of the *tzibbur*, there must be nine people listening so that there is a full group of ten that are part of these blessings<sup>8</sup>.

According to the approach of the Drisha, one should preferably have ten people who are part of the *davening*, but one may be lenient in case of need. According to the Magen Avraham, six of the ten is sufficient, while according to the Graz and Pri Megadim, six out of ten suffices for other *devarim shebikdusha* but not for *chazaras hashatz*<sup>9</sup>.

On top of all this is another point of debate: Most *Acharonim* understand that when the aforementioned passage in Shulchan Aruch rules that if one person began *Shemone Esrei* ahead of the others, the *davar shebikdusha* may be recited, the same is true for more than one (up to four)<sup>10</sup>. The Chayei Adam, however, rules (29:1) that no more than one person may be missing from actual participation in the *davar shebikdusha*, and even this, he says, is permitted only in a case where it is not possible otherwise<sup>11</sup>. According to the Chayei Adam, then, one would always need at least nine people who have not yet *davened*, or, for *chazaras hashatz*, who are part of the *davening* and listening to *chazaras hashatz* (including the *shli'ach tzibbur* himself), and preferably the full ten should be part of the *davar shebikdusha*.

<sup>7</sup> For example, where the *shli'ach tzibbur* is reciting the first three *brachos* of *Shemone Esrei* along with *kedusha* before everyone else has recited *Shemone Esrei*, a process colloquially known as a "hoiche *kedusha*" whose parameters are beyond the scope of this article.

<sup>8</sup> This indicates that *chazaras hashatz* does not require ten people due to its status as a *davar shebikdusha*, but because it was enacted by Chazal to be recited on behalf of a *tzibbur*. This is at odds with the Ran cited earlier who says that the *kedusha* renders the entire *chazaras hashatz* a *davar shebikdusha*.

<sup>9</sup> Because of the Rosh's concern of *bracha levatala*, and the tendency of many people to not pay attention to *chazaras hashatz*, it is advisable that a *shli'ach tzibbur* have in mind, upon reciting *chazaras hashatz*, that his prayer is a *tefilas nedava*, an additional, voluntary prayer.

<sup>10</sup> In contradistinction to this, many *Acharonim* rule that only one of the ten may be sleeping, but not more. See Mishna Berura 55:6. There is much discussion regarding the reasoning behind the distinction between the two cases. See Shulchan Aruch Harav Orach Chaim 55:8 for one approach.

<sup>11</sup> This ruling seems to be at odds with the Ramban cited by the Ran, mentioned earlier. However, see Asufos Rabbeinu Chaim HaLevi (Megillah 23a) where an alternate approach for understanding the Ramban is put forth by Rabbi Chaim Soloveitchik for the purpose of resolving the Chayei Adam's ruling.

The Mishna Berura (69:8) says that if there are six people who did not yet *daven*, they are considered a "complete *tzibbur*." This indicates the Mishna Berura rules leniently in accordance with the Magen Avraham. However, this is not so simple, as will be demonstrated below.

**Tefila Bitzibbur with Six of Ten:** One would expect that the same opinions of *rubo kikulo* that have been discussed regarding a *davar shebikdusha* would apply to having six of ten *davening Shemone Esrei* together to create *tefilah bitzibbur*. However, this is not the case.

The Chayei Adam (19:1) rules that *tefila bitzibbur* requires all ten people to *daven* at the same time. He points out that many people err on this matter and think that the primary purpose of having a *minyan* is for *kaddish*, *kedusha*, and *barchu*, and so simply having ten people in shul suffices, but he says this is a mistake.

The Mishna Berura (90:28) cites the aforementioned Chayei Adam, indicating that *tefila bitzibbur* does indeed require ten people who are actually *davening* together. This seems to contradict the Mishna Berura's ruling, cited earlier, that six people create, in his words, a "complete *tzibbur*."

The answer may lie in the words of Rabbi Moshe Feinstein. In three responsa (Igros Moshe Orach Chaim 1:28-30), Rabbi Feinstein rules in accordance with the Chayei Adam, explaining that the law of *rubo kikulo* applies only for a *davar shebikdusha*. To achieve *tefila bitzibbur*, however, one must have an actual *tzibbur* – that is, ten people – praying together, not six out of the ten<sup>12,13</sup>.

This would resolve the two rulings of the Mishna Berura, as the Mishna Berura cites the Chayei Adam regarding *tefila bitzibbur*, while he rules that six is a complete *tzibbur* regarding a *davar shebikdusha*.

The Minchas Yitzchak (90:6), however, rules that six out of ten does suffice for *tefila bitzibbur*. However, in the next response (ibid.:7), he cites opinions on both sides of the question, and concludes that one should ideally have all ten, but if this is not possible, six out of ten is still considered *tefila bitzibbur*.

Rabbi Moshe Shternbuch (Teshuvos Vihanhagos 1:102) says, based on the words of the Rambam, that there are two distinct areas that must be considered, "*tefila bitzibbur*" and "*tefilas hatzibbur*." "*Tefila bitzibbur*" means an individual praying with a *tzibbur*; this is accomplished when there is a majority *davening* together. "*Tefilas hatzibbur*," however, is only when there is actually a group of ten *davening* together; a majority will not suffice for this. Rabbi Shternbuch says that while *tefila bitzibbur* is a more elevated prayer than *davening* as an individual, *tefilas hatzibbur* is a higher level as it has the status of a *korban tzibbur*, a public offering brought for Hashem.

**Conclusion:** This article has attempted to lay out some of the basic opinions of a complex halachic discussion. There are many more sources and views not discussed in this article. Because there are many nuanced opinions on these matters, each shul has its own approach. It seems clear that having a full ten people who are actually part of the *davening* is preferable in all situations. However, when this is not feasible, either due to a lack of people who have not yet *davened* or because of *tircha ditzibura* (undue bother for the congregation), there are leniencies. Each situation requires its own decision by a competent halachic authority.

<sup>12</sup> The exact distinction between *tefila bitzibbur* and a *davar shebikdusha* is explained by Rabbi Feinstein in the responsa, but is beyond the scope of this article.

<sup>13</sup> Rabbi Feinstein (end of Responsum 30) notes, however, that from the Rambam who says that a majority of the group must be praying, along with the explanation of the Kesef Mishna (both discussed earlier in this article), it appears that six of ten suffices. See there for full discussion.

## **Points to Ponder:**

***Can members of a minyan begin Shemone Esrei at different times and still create a tzibbur?***

***What is the halacha if a tenth person arrived only after Shemone Esrei was recited by less than ten people?***

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